

**Letter of Findings Number: 04-20100708**  
**Sales/Use Tax**  
**For Tax Years 2006 - 2009**

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**ISSUES**

**I. Sales/Use Tax—Lighting Equipment.**

**Authority:** IC § 6-8.1-5-1(c); IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-1-1; [45 IAC 2.2-1-1](#).

Taxpayer protests the assessment of use tax for lighting equipment.

**II. Sales/Use Tax—Barcode Equipment.**

**Authority:** IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-8.1-5-1(c); [45 IAC 2.2-5-8\(j\)](#).

Taxpayer protests the assessment of use tax on barcode equipment.

**STATEMENT OF FACTS**

Taxpayer "is engaged in the business of designing and manufacturing point of sales printed packaging for their customers." Taxpayer was audited by the Indiana Department of Revenue ("Department"). Following the audit, Taxpayer filed a protest. A telephone hearing was held, and this Letter of Findings results. Further facts will be supplied as required below.

**I. Sales/Use Tax—Lighting Equipment.**

**DISCUSSION**

The Department initially notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c). Regarding sales and use tax, Indiana imposes a sales tax on retail transactions and a complementary use tax on tangible personal property that is stored, used, or consumed in the state. IC § 6-2.5-2-1; IC § 6-2.5-3-2. With that in mind, we now turn to Taxpayer's protest.

As noted, Taxpayer designs and manufactures "point of sales printed packaging...." As the Audit Report states:

The taxpayer specializes in multi color printed boxes for high visibility on store shelves. [Taxpayer] has plants located in [multiple] states around the country including Indiana. Their customers consist of many large consumer product producers in a variety of different products.

Following its audit, Taxpayer filed a protest with the Department. In its protest letter, Taxpayer states that it "request[s] the Department reconsider its audit assessment for [Company S] and [Company B] invoices listed in the capital section of the... audit work papers." Regarding Company S (lighting equipment), Taxpayer states that it has documentation to support its claim that "tax was paid on a later invoice for these purchases."

The Department first addresses the invoices "22826207" and "22819207" (the latter of which was apparently initially charged by Company S at seven percent sales tax on the material, but was corrected by Taxpayer and Company S to six percent, since it was in the year 2007). Those invoices show a portion of the sales tax due. The reason it was only a portion of the tax due, and not the entire amount due, is shown by examining the relevant Indiana law. IC § 6-2.5-1-1 provides that:

(a) Except as provided in subsection (b), "unitary transaction" includes all items of personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is calculated.

(b) "Unitary transaction" as it applies to the furnishing of public utility commodities or services means the public utility commodities and services which are invoiced in a single bill or statement for payment by the consumer.

(Emphasis added).

And [45 IAC 2.2-1-1](#) states in relevant part:

(a) Unitary Transaction. For purposes of the state gross retail tax and use tax, such taxes shall apply and be computed in respect to each retail unitary transaction. A unitary transaction shall include all items of property and/or services for which a total combined charge or selling price is computed for payment irrespective of the fact that services which would not otherwise be taxable are included in the charge or selling price.

(Emphasis added).

The two invoices state the "Labor Tot:" and the "Material Tot:"—but the total charged is a combined charge (the invoices show a "Sub Total" is the labor and material, then with a line that only taxes the material, resulting in a "Invoice Total"). As noted above, the labor and material were furnished under a single order. Thus the tax due should have been on the "total combined charge or price..." under IC § 6-2.5-1-1(a). Therefore, since the invoices

of issue are in fact for a unitary transaction, the Department properly imposed tax on the total combined bill.

#### FINDING

Taxpayer's protest is respectfully denied.

#### II. Sales/Use Tax—Barcode Equipment.

#### DISCUSSION

Taxpayer also protests regarding use tax assessed related to bar code equipment purchased from a vendor ("Company B "). Taxpayer states in its protest letter that a project was initiated "to replace its outdated inventory tracking system at approximately fifty plant locations" in the United States. Taxpayer states:

The project involved implementing bar code scanning equipment at each of the fifty locations. The new bar code scanning system would improve the accuracy of inventory tracking (raw materials & finished goods) while also improving the accuracy of order fulfillment and on time delivery of shipments to customers.

And further, Taxpayer states:

The [Indiana] facility was selected for several reasons. This plant has an IT resource that could receive, secure, configure and then ship the equipment to each facility. The [Indiana] facility also had a secured storage area that could accommodate four hundred bar coders and the ancillary equipment, such as batteries and cables.

The bar code units were then purchased and shipped to the [Indiana] facility for storage and configuration. Since the software was already installed in the bar coders, the [Indiana] IT specialist configured the equipment by programming each scanner for the facility they were to be shipped. The equipment was then run through a brief software configuration so it would talk to that site, and was then set up with an IP address and server. Once configured, the bar coding equipment was shipped to the other box plants throughout the country. As [the Indiana location] is the only box plant located in Indiana, no equipment was shipped to other locations within Indiana.

(Emphasis added).

Regarding use tax, IC § 6-2.5-3-2 states in relevant part:

(a) An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

(Emphasis added).

From Taxpayer's protest letter, the bar code equipment was stored in Indiana ("the [Indiana] facility... had a secured storage facility...."); the bar code equipment was also used in Indiana ("configured the equipment by programming each scanner," "run through a brief software configuration....").

Thus the only question is whether the bar code equipment is exempt under IC § 6-2.5-3-4, which states:

(a) The storage, use, and consumption of tangible personal property in Indiana is exempt from the use tax if:

(1) the property was acquired in a retail transaction in Indiana and the state gross retail tax has been paid on the acquisition of that property; or

(2) the property was acquired in a transaction that is wholly or partially exempt from the state gross retail tax under any part of [IC 6-2.5-5](#), except [IC 6-2.5-5-24](#)(b), and the property is being used, stored, or consumed for the purpose for which it was exempted.

(b) If a person issues a state gross retail or use tax exemption certificate for the acquisition of tangible personal property and subsequently uses, stores, or consumes that property for a nonexempt purpose, then the person shall pay the use tax.

However, Taxpayer, in its protest letter, does not cite to any statute, regulation or court case in support of its position. As previously noted, Taxpayer bears the burden of proof under IC § 6-8.1-5-1(c). In the present case, Taxpayer has not established that the bar coding equipment is exempt under IC § 6-2.5-3-4. And, as the Audit Report stated, the bar coding equipment is taxable under [45 IAC 2.2-5-8\(j\)](#), which states: "Machinery, tools, and equipment used in managerial sales, research, and development, or other non-operational activities, are not directly used in manufacturing and, therefore, are subject to tax."

#### FINDING

Taxpayer's protest is respectfully denied.

#### SUMMARY

Taxpayer's protest of the lighting equipment and the bar coding equipment is denied.

*Posted: 12/28/2011 by Legislative Services Agency*

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